

Docket No.: 064693-0092

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Customer Number: 33401
SHEHADA, RAMEZ EMILE NECOLA : Confirmation Number: 1472
Serial No.: 10/775,666 : Group Art Unit: 3761
Filed: February 09, 2004 : Examiner: Hill, Laura C

For: SURGICAL DRAIN WITH
SENSORS FOR MONITORING
INTERNAL TISSUE CONDITION

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Susica Brown
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RESPONSE TO RESTRICTION REQUIREMENT OF SEPTEMBER 19, 2005

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Examiner Hill:

Noting the Office Action of September 19, 2005, wherein election of a single disclosed species for prosecution on the merits has been required, Applicant hereby elects the species that Examiner identified as corresponding to Figure 1A. Claims 44-67 read on Figure 1A; the Applicant elects Claims 44-67 with traverse.

The Applicant respectfully traverses the restriction requirement. Applicant believes that the examiner's election of species requirement was improper because Claim 1 does not appear to be generic to all of the species. Specifically, Claim 1 further includes "a drain portion configured to rest against a substantial length of tissue within the body cavity," and "a plurality

of drain holes spaced along substantially the entire length of the drain portion." According to MPEP 806.04(d):

In an application presenting three species illustrated, for example, in Figures 1, 2, and 3, respectively, a generic claim should read on each of these views; but the fact that a claim does so read is not conclusive that it is generic. It may define only an element or subcombination common to the several species. Furthermore, *a generic claim should require no material element additional to those required by the species claim*, and each of the species claims must require all the limitations of the generic claim.

In the present application, none of the claims corresponding to the species pointed out by the Examiner require the two limitations that were described above of Claim 1. Therefore, Applicant respectfully requests that the Examiner withdraw the election of species requirement and proceed with examination of claims 1-13, 14, and 27-67, of Group 1.

A petition for a three month extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit account 501946 and please credit any excess fees to such deposit account.

Respectfully submitted,
MCDERMOTT WILL & EMERY LLP



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